

SECTION A

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

**THERE IS NO AUTHORITY TO SPEND
FEDERAL APPROPRIATIONS WITHOUT
SPECIFIC STATUTORY AUTHORITY.**

I. CONSTITUTIONAL FOUNDATION

A. The Congressional Power of the Purse.

1. Congress has the power to raise revenue and borrow money. U.S. Constitution, Article I, Section 8, Clause 1 - 2.
2. Congress has the power to raise and support armies and a navy. U.S. Constitution, Article I, Section 8, Clause 12 - 13.
3. No money shall be drawn from the Treasury, but in consequence of appropriations made by law. U.S. Constitution, Article I, Section 9, Clause 7.
4. A regular statement and account of all receipts and expenditures of public money shall be published from time to time. U.S. Constitution, Article I, Section 9, Clause 7.
5. No appropriation for the support of armies shall be for longer than 2 years. U.S. Constitution, Article I, Section 8, Clause 12.
6. Congress' power of the purse is extremely broad. Congress may limit a recipient's use of federal appropriations to those purposes it chooses to subsidize. Rust v. Sullivan, 111 S.Ct. 1759. (1991).

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

B. The President's Powers Are Limited.

[The President] shall take care that the laws be faithfully executed. U.S. Constitution, Article II, Section 3.

II. THE APPROPRIATIONS PROCESS.

A. President's Budget. Title 31, United States Code, Chapter 11.

1. The President must submit a consolidated budget to the Congress during the first 15 days of each regular session of Congress. 31 U.S.C. § 1105. The contents of the budget are specified by law.
2. The data contained in the budget is developed by individual agencies. 31 U.S.C. § 1108. In the Department of Defense (DoD), the Programming, Planning, and Budget System (PPBS) regulates the development of the DoD Budget.

B. Enacting Appropriations.

1. Congress has three separate groups of committees which participate in appropriating funds: budget committees, authorizing committees, and appropriations committees. These committees have competing interests, and the lines of responsibility between committees shift over time.
2. Budget Committees. The House and Senate Budget Committees have the responsibility for balancing revenues against outlays. They provide the authorizing and appropriating committees with ceilings on total outlay levels. They also provide revenue raising committees with goals for revenues. They write the annual Budget Resolutions which establish these goals. The

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL

FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

Budget Committees' work is an internal congressional process with little executive branch involvement.

3. Authorization Process.

- a. Authorizing committees draft the legislation authorizing Congress to appropriate funds for various agencies and programs. For the DoD, the authorizing committees are the House and Senate Armed Services Committees.
- b. After receipt of the President's Budget, the authorizing committees hold hearings. After the completion of hearings, they mark-up draft legislation, which is then reported to the House or Senate for action. After each house has passed its own version of the authorizing legislation, a conference committee meets to work out differences in the two versions of the bill. The compromise version of the authorizing legislation is then reported to the two houses for final action and transmittal to the President for signature or veto.
- c. Many DoD Appropriations can not be legally obligated unless authorized. 10 U.S.C. § 114(a). Authorizing legislation does not allow funds to be withdrawn from the Treasury.

4. Appropriations Process.

- a. The House and Senate Appropriations Committees draft the legislation which actually appropriates funds from the Treasury.

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

- b. The appropriations committees follow the same process as that followed by the authorizing committees regarding hearings, mark-up, reporting, conference committees on the two versions, and reporting the final compromise version for passage by both houses.
- c. The appropriations acts often contain spending provisions which are written in general language, but directed at specific expenditures.

C. Presentment to the President.

All authorization and appropriations acts must be presented to the President for signature or veto. U.S. Constitution, Article I, Section 7.

D. Obligation Authority.

- 1. The annual authorization and appropriations acts generally provide Budget Authority, the authority to incur a legal obligation to pay a sum of money from the U.S. Treasury. 31 U.S.C. § 1511. Occasionally, an appropriations act will provide Contract Authority, the authority to incur legal obligations in advance of appropriations.
- 2. Budget authority is not money. Only when the agency issues a check withdrawing money from the Treasury and outlays or expends it to pay an obligation previously incurred, does the Treasury actually disburse cash.

III. DISTRIBUTION OF BUDGET AUTHORITY.

A. Controls on Budget Authority.

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL

FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

1. Law and agency management procedures impose limitations on the amount and rate at which budget authority may be obligated.
 2. These controls are intended to achieve an effective and orderly use of budget authority and to reduce the need for supplemental or deficiency appropriations.
- B. OMB Apportionment.
1. Based on the various specific appropriations provided for in the annual DoD Appropriations Acts, Office of Management and Budget (OMB) apportions the budget authority to the agencies. Apportionment is a distribution of budget authority by OMB that imposes limitations on the amount of obligations allowed during a given period under an appropriation. 31 U.S.C. § 1512; AR 37-1, Glossary, Section II, Terms.
 2. Apportionments divide the amounts available for obligation by specific time periods (usually quarters), activities, functions, projects, objects, or by a combination thereof. 31 U.S.C. § 1512.
 - a. In apportioning an account, funds may be reserved to provide for contingencies or to effect cost savings.
 - b. An apportionment is considered a formal subdivision of budget authority.
 - c. OMB apportions budget authority in an effort to control Outlays.

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

C. Agency Fund Distributions.

1. Upon receiving its apportionment from OMB, DoD apportions its budget authority to the military departments and defense agencies.
 - a. Within the DoD, formal subdivisions of funds are established at the highest practical level. R. Dahoney, Resource Management, 19 February 1988.
 - b. Army policy establishes formal subdivisions of funds at the Major Command level. AR 37-1, para. 6-16.
2. Agency Allocations/Allotments.
 - a. An allocation is a distribution of budget authority by an agency (DoD/DA) to an operating agency making amounts available for obligations in prescribed amounts for suballocation or allotment to its subordinate activities. AR 37-1, Glossary, Section II, Terms.
 - b. Amounts transferred by an allocation must be used to carry out the purposes of the parent appropriation.
 - c. An allocation is a formal subdivision of budget authority.
3. MACOM Allowance/Target.
 - a. An allowance or target is an administrative distribution of budget authority by an operating agency making budget authority available to its subordinate activities for obligation through the use of an expenditure

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

target. AR 37-1, Glossary, Section II, Terms.

- b. Allowances or targets are informal allocations or suballocations of budget authority within an agency below the level for which formal subdivisions of budget authority are required.
- c. Incurring obligations in excess of an allowance or target does not automatically create an antideficiency violation. If the governing formal subdivision is exceeded, however, an antideficiency violation may exist, and the person responsible for exceeding the allowance or target can be held liable for the antideficiency violation. AR 37-1, Glossary, Section II, Terms.

IV. THE ACCOUNTING SYSTEM.

A. General Principles

- 1. Executive agencies are required to establish administrative systems to ensure that obligations and expenditures of appropriated funds do not exceed the amount appropriated, apportioned, or reappportioned. 31 U.S.C. § 1514(a)(1).
- 2. The fund control system must enable the agency head to fix responsibility for an obligation that exceeds an appropriation or apportionment. 31 U.S.C. § 1514(a)(2).
- 3. Formal administrative subdivisions of funds should be established at the highest practical level. 31 U.S.C. § 1514(b).

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL

FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

4. The structure of the fund control system is determined by the agency.
 5. Within the DoD, DoD Manual 7220.9-M provides the regulatory framework for the services' fund control systems.
 - a. Army Regulation (AR) 37-1 provides additional details on the Army's accounting system.
 - b. Air Force Regulations (AFR) 170-6 and 170-8 provide additional guidance for the Air Force.
- B. Accounting Classifications.
1. Accounting Classifications are codes used to manage appropriations. They are used to implement the administrative fund control system and aid in ensuring that funds are used correctly.
 2. An accounting classification is commonly referred to as a fund cite. AR 37-100 and AR 37-100-XX provide a detailed breakdown of Army accounting classifications. The XX, in AR 37-100-XX, stands for the last two digits of the fiscal year, e.g., AR 37-100-95 is the source for accounting classification data for Fiscal Year 1995 for the Department of the Army. AR 37-100-XX is published annually.

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

C. Understanding an Accounting Classification.

1. The following is a sample fund cite:

21 5 2020 67 1234 SEE CROSSWALK 2610 S18001

AGENCY

FISCAL YEAR

TYPE OF APPROPRIATION

OPERATING AGENCY CODE

ALLOTMENT NUMBER

PROGRAM ELEMENT

ELEMENT OF EXPENSE

FISCAL STATION NUMBER

2. The first seven digits in the fund cite are the most important part. In the example above the first seven digits are: 21 5 2020.

a. The first two digits represent the military department. The "21" in the example shown is the Department of the Army.

b. Other Department codes are:

(1) 17 - Navy

(2) 57 - Air Force

(3) 97 - Department of Defense

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL

FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

- c. The third digit shows the Fiscal Year/Availability of the appropriation. The "5" in the example shown represents Fiscal Year (FY) 1995 funds.
 - (1) Annual appropriations are frequently used in installation contracting. Several examples of annual appropriations are set forth below:
 - (a) Third Digit = 1 = FY 1991 funds;
 - (b) Third Digit = 2 = FY 1992 funds;
 - (c) Third Digit = 3 = FY 1993 funds;
and
 - (d) Third Digit = 4 = FY 1994 funds.
 - (e) Third Digit = 5 = FY 1995 funds.
 - (2) Several other fiscal year designators, less frequently encountered in installation contracting, are:
 - (a) Third Digit = X = No Year appropriation, which is available for obligation indefinitely.
 - (b) Third Digit = 0/5 = Multi-Year appropriation, in this example, funds appropriated in Fiscal Year 1990 and available for obligation until Fiscal Year 1995.

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

c. The next four digits reveal the type of the appropriation. Common DoD designators are:

| | <u>ARMY</u> | <u>NAVY/MC</u> | <u>AIR FORCE</u> | <u>OSD</u> |
|--|-------------|----------------|------------------|------------|
| Military Personnel | 2010 | 1453/1105 | 3500 | N/A |
| Reserve Personnel | 2070 | 1405/1108 | 3700 | N/A |
| National Guard Personnel | 2060 | N/A | N/A | N/A |
| O&M | 2020 | 1804/1106 | 3400 | 0100 |
| O&M Reserve | 2080 | 1806/1107 | 3740 | N/A |
| O&M National Guard | 2065 | N/A | N/A | N/A |
| O&M Family Housing | 7025 | 7035(?) | 7045 | |
| Procurement (Aircraft) | 2031 | 1506 | 3010 | N/A |
| Procurement (Missiles) | 2032 | N/A | 3020 | N/A |
| Procurement (Weapons & Tracked Vehicles) | 2033 | 1507 | N/A | N/A |
| Procurement (Ammunition) | 2034 | N/A | N/A | N/A |
| Shipbuilding & Conversion | N/A | 1611 | N/A | N/A |
| Other Procurement | 2035 | 1810/1109 | 3080 | 0300 |
| Research, Development, Test & Evaluation (RDT&E) | 2040 | 1319 | 3060 | 0400 |
| Military Construction | 2050 | 1205 | 3300 | |
| Family Housing Const. | 7020 | 7030(?) | 7040 | |
| Reserve Construction | 2086 | 1235 | 3730 | N/A |
| National Guard Const. | 2085 | N/A | N/A | N/A |
| Stock Fund | 4991 | 4911 | 4921 | |
| Industrial Fund | 4992 | 4912 | 4922 | |

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

V. EXECUTION OF BUDGET AUTHORITY

- A. Individual Activities Manage the Budget Authority Distributed to Them.
 - 1. The principal management tool is commitment accounting. A commitment is an administrative reservation of funds based on a document authorizing an obligation. AR 37-1, para. 8-1.
 - 2. Different agencies use different forms to authorize obligations and to commit funds. Within the Department of Army, a DA 3953 is used for this purpose in the absence of an activity specific form.
 - 3. Agency fund managers may also provide budgetary data (initiations) for planning purposes on identical or similar forms.
- B. Commitment of Funds.
 - 1. After budget authority has been distributed to the activity and activity management has approved a particular use of a particular amount of this budget authority, the financial manager certifies fund availability and reserves an amount equal to the estimated amount of the obligation. AR 37-1, para. 8-4.
 - 2. Improperly authorizing obligations may violate statutory fiscal controls.
- C. Obligation of Funds.
 - 1. When an event occurs which results in a legal liability to disburse funds from the Treasury, either immediately or in the future, an obligation arises.

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

2. Obligations must be supported by documentary evidence. 31 U.S.C. § 1501(a).
 3. Financial managers must promptly record obligations. AR 37-1, para. 9-7.
- D. Expenditure and Recoveries of Funds.
1. After an agency incurs an obligation, it generally will liquidate the obligation by paying funds from the Treasury. Such transactions are called expenditures, outlays, or disbursements. These terms are used interchangeably. AR 37-1, Glossary, Section II.
 2. Alternatively, some future event may reduce the amount of the government's legal liability to pay. In such instances, the amount recorded as the obligation is adjusted. These adjustments are called recoveries (formerly deobligations). AR 37-1, Glossary, Section II.
- E. Rescission of Funds.
1. Agencies must obligate and expend budget authority unless that budget authority is rescinded. 2 U.S.C. § 683(b).
 2. The President must notify Congress of proposed rescissions of budget authority. 2 U.S.C. § 684(a).

VI. FISCAL CONTROLS.

- A. Purpose. An appropriation may only be expended for the purposes for which it was appropriated. 31 U.S.C. § 1301(a) ("purpose" statute).

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

- B. Time. An appropriation may only be expended for the bona fide needs of the period in which it is available for obligation. 31 U.S.C. § 1502 (bona fide needs" statute).
- C. Amount. There must be an available appropriation to support every obligation or expenditure. 31 U.S.C. §§ 1341, 1342, 1511-1519.

VII. CURRENT FISCAL ISSUES.

- A. The Deficit: Revenues v. Outlays.
 - 1. The deficit is the difference between outlays and revenues. It is funded by increased borrowings.
 - 2. Closing this gap by increasing revenues requires increasing taxes.
 - 3. Closing this gap by decreasing outlays is difficult because Congress does not directly legislate outlays. Outlays are a combination of expenditures due to previously enacted appropriations and expenditures resulting from new appropriations.
- B. The Budget Agreement.
 - 1. In 1990, the President and Congress reached a budget agreement which set outlay ceilings for broad budget categories for five years.
 - 2. This agreement effectively reduced the role of the Budget Committees in the appropriations process.
 - 3. Every new program requires an offsetting reduction in outlays or increase in revenues.
- C. Use of Expired Accounts.

CONSTITUTIONAL FOUNDATION

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

CONSTITUTIONAL FOUNDATION

VIII. CONCLUSION.